



# UTAH DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

## NEWSLETTER

JULY 2006

### **Legislation**

In the May 24, 2006 special session of the Utah legislature, a bill was passed to require broker-dealers to report to the Division information about trades that fail to settle on time. The bill was signed by the Governor and went into effect on July 1, 2006.

Beginning on October 1, 2006, every broker-dealer licensed in Utah must report to the Division information about all trades of securities in Utah-based companies that fail to settle on time. This information must be submitted within 24 hours of the settlement failure. The information reported to the Division will be made public. The report to the Division must identify the security that was traded, the identity of the customer, and other transaction-related information.

The Division is preparing a form to be used by firms when reporting these settlement failures. Rulemaking may be needed to finalize the reporting procedures. It is anticipated that the reports will be made available on the Division's web site, to facilitate public access to the information.

The reports must identify failed trades for companies that are incorporated in Utah or that have their principal offices in Utah. The Division also is compiling a list of issuers whose securities would be subject to the new law.

### **"Independence" Claims Cause Concern**

The Division is concerned that some licensees are representing to the public that they are "independent" financial advisers. This assertion often is accompanied by a claim that this independent status aligns the broker's or adviser's interests with customer

interests more closely than financial advisers associated with large firms or broker-dealers. These claims frequently are made as part of free seminars offered to help seniors evaluate their retirement planning.

Statements such as these may be misleading unless the broker or adviser is the owner of a broker-dealer or investment adviser. If financial advisers claiming to be "independent" are, in fact, agents of a broker-dealer or are investment adviser representatives, their ability to recommend or execute securities transactions is dependent on their compliance with policies of their employers. Such agents can make only those recommendations approved by their firms and are subject to compliance and operational obligations of that firm.

Broker-dealer agents and investment adviser representatives must prominently disclose their affiliations with employing firms when participating in any activities involving the offer or sale of securities or advice about securities (including any discussions about selling securities owned by a customer in order to move those funds into annuities or other products). In addition, agents and representatives should avoid making statements claiming to be independent unless they truly are independent of any other firm.

### **Issuer Agents**

The Utah Uniform Securities Act expects that in most instances, issuers will sell their securities to the public through broker-dealers. In some instances, however, an issuer can license an issuer agent to sell its securities.

The statute permitting issuer agents to be licensed requires adherence to several conditions. First, the issuer agent must satisfy the procedural requirements by filing an application, paying the requisite fee, passing the Series 63 or 66 examination, and, if required by R164-11.1(e), submitting a surety bond. Second, the agent must be a partner, officer, or director of the issuer. Third, the agent cannot receive any commissions or compensation tied to the agent's selling securities of the issuer. The agent may be paid a salary for the agent's role as a partner, officer, or director, but any payment cannot be tied to the agent's success in selling the securities. Fourth, the agent may sell only the securities of the one issuer; the agent may not act as an agent for multiple issuers.

For Regulation D offerings, the issuer agent does not have to be an officer or director of the issuer, but still is prohibited from receiving commissions or any other form of transaction-based compensation. In addition, there may be other exemptions or exclusions from the issuer agent licensing requirements, depending on the nature of the transaction. More information can be found on our web site at [www.securities.utah.gov](http://www.securities.utah.gov).

### **Advisory Board**

On June 29, the Department of Commerce announced that three new members of the Securities Advisory Board were confirmed. Commerce Executive Director Francine Giani said "These highly qualified individuals bring a wealth of experience and will energize the Board." The three new members are:

Tim Bangerter as one of the board members from the securities industry. Bangerter is owner of the investment adviser Bangerter Financial Group, in Bountiful, and a securities agent with Linsco/Private Ledger.

Mark Pugsley joins as the representative of the Securities Section of the Utah Bar Association. Mr. Pugsley is a partner of the

law firm Ray, Quinney, & Nebeker and is a member of the SIA's Compliance and Legal Division.

Craig Skidmore is managing director of Advantage Partners of Alpine and has been an officer of the local chapter of the National Association of Corporate Directors. He serves as the Board's corporate member.

The new board members join existing board members Edward McCartney of Fidelity and Laura Polacheck, the public member. The Division expresses its gratitude to John Jackson of Merrill Lynch and attorney Robert Thorup for their dedicated service to the state as departing members of the board.

### **Statistical Information**

<b>Licensing Activity</b>	<b>This Quarter</b>	<b>June 30 Total</b>
Broker-dealers	47	1975
Broker-dealer agents	2497	73454
Investment advisers (state)	5	932
I.A. representatives	219	2780
Issuer agents	11	72
<b>Filing Activity</b>		<b>YTD</b>
Coordination registration	34	65
Qualification registration	1	1
Mutual funds/UITs	1048	2153
Regulation D filings	249	461
Exemption filings	11	23

### **Enforcement**

The "Right Way" to Prevent Fraud In June, the Division had an excellent illustration of how protecting the public can be most effective when we have the assistance of licensed agents. An advertising flyer was distributed to many homes in Utah County saying:

"You work hard for your money, so why not have your money work hard for you. If your savings and investments (i.e. Stocks, Bonds, CD's, Money Market Accounts, Home Equity Line of Credit, etc.) are not yielding 21% interest annually, you may want to give

me a call. By investing with [omitted], your money would immediately begin earning a guaranteed 21% interest annually . . . .

Trent Searles, an agent living in Cedar Hills, recognized the potential fraud and sent a copy of the advertising flyer to the Division as soon as he received it. This quick referral made it possible for the Division to conduct an immediate investigation. One of the Division's investigators met with the promoter, pretending to be an interested investor. After getting a pitch for the investment (and taping the meeting), the investigator told the promoter that soliciting investments, as the promoter was doing, required that the promoter be licensed, the investment program be registered, and full disclosure be given.

The promoter had not yet taken any money from investors. Due to Trent's quick action in notifying our office of this investment offering, we were able to conduct an investigation immediately and were able to stop the improper conduct before any investor furnished funds. The Division is taking action to ensure this promoter will not repeat this solicitation and to halt similar schemes from continuing.

Summary of Actions The enforcement actions initiated or concluded during the second quarter of 2006 are listed below. Copies of enforcement orders entered by the Division can be found at [www.securities.utah.gov](http://www.securities.utah.gov) . Remember: in criminal prosecutions, the defendants are presumed innocent until proven guilty, or until a plea is entered.

Apr. 3, 2006. An order to show cause was issued against sellers of investments in "Ad Toppers." Ad Toppers were advertising screens that would be placed in public locations throughout the U.S. Promoters said they would place the screens and use revenue generated by advertising to pay guaranteed 16% profits to investors. The order names **Clifton C. Sneed, Jr.** of

Dallas, TX, **Sneed Financial Services, LLC**, of Austin, **Unlimited Cash, Douglas Network Enterprises, Wayne D. Flesher**, and **Nancy C. Khalial** of Southern California. \$92,000 was raised from three Utah investors, including an 86-year-old blind Utahn. Docket No. SD-06-0016.

Separately, the Utah Attorney General filed criminal charges against Sneed on March 30. The SEC has filed a civil suit in Texas to freeze the assets of Unlimited Cash.

Apr. 10, 2006. **Kenneth W. Webb**, of Salt Lake, was sentenced on criminal charges of fraudulently persuading a company owner to transfer to him ownership of a company and its assets. Webb, hired as a consultant to a company, told company owners they were violating securities laws and the only way to save the company was to transfer ownership to him. He failed to disclose a history of criminal convictions for bad checks and drug violations. Webb pleaded guilty to a third degree felony in January 2006, closing a case filed in April 2005. He also was ordered to pay restitution.

Apr. 17, 2006. The Securities Advisory Board approved an order in which **Henry S. Brock**, of St. George, agreed to be barred from the securities industry for holding seminars fraudulently targeting senior investors. Brock had solicited securities transactions while not licensed, guaranteed customers against loss, failed to maintain proper books and records, and used scare tactics at seminars targeting seniors. Docket No. SD-03-0007.

Apr. 17, 2006. **Todd A. Davis**, of Arizona, was barred from the securities industry and will pay \$60,000 in restitution and fines. Davis was a licensed agent who purchased high-risk, low-priced securities for the account of a retired couple out of the country providing volunteer services. In addition to purchasing speculative securities, Davis also conducted excessive trading, made unauthorized purchases, and engaged in a manipulative scheme to promote some

of the companies whose stocks he placed into the account. Davis's broker-dealer previously stipulated to an order in which most of the restitution owed was paid to the customers. Docket No. SD-00-0043.

Apr. 17, 2006. A consent order was entered against **Adam H. Rucksdeschel**, of New York City, for engaging in unauthorized margin trades, excessive trading, ignoring customer instructions, buying unsuitable stocks, and misrepresenting information to a customer. The client's portfolio was turned over an average of 11 times in a year and lost 92% of its value. Rucksdeschel is suspended from the securities industry for two years and will pay \$25,000 in fines and \$25,000 in restitution. The case also has been resolved against two other agents of this firm, but is still pending against the firm and its president. Docket No. SD-02-0139.

Apr. 18, 2006. A cease and desist order was entered by default against **American-Dairy.com** and **A. Paul Schwenke**, of Draper. The default order finds that Schwenke and American-Dairy ("company") persuaded owners of a dairy to exchange ownership in their dairy for stock in the company. The dairy went bankrupt when the company failed to make payments on loans it took out on the dairy. Schwenke failed to disclose to the investors that he was an attorney who had been disbarred for taking client funds and that he owed \$452,555 in unpaid tax liens. Schwenke currently is in prison for an earlier securities fraud conviction. The case continues against Jamis M. Johnson, CEO of American-Dairy. Docket No's. SD-06-0010, 0011, 0012.

Apr. 19, 2006. **Kevin L. Wright**, of Washington County, was ordered to cease and desist violating securities laws and ordered to pay \$118,000 in restitution and fines. The default order was entered after Wright failed to respond to an order to show cause issued in February. Wright was accused of persuading an investor to purchase a home with borrowed funds, then

using some of the proceeds for his own purposes, including paying a prior debt owed by Wright and a diamond investment by Wright's partner. The case continues against his partner, Michael S. Hurst. Docket No. SD-06-0008.

Apr. 25, 2006. An order to show cause was issued against **Jennifer Robyn Burkinshaw**, of Salt Lake, for soliciting investments in nightclubs and defrauding those investors. The order alleges Burkinshaw took \$123,000 from five investors to open two clubs in Salt Lake County. According to the order, she falsely claimed to have a money from commercial loan to open the businesses and that she had property to secure the investment. She failed to tell investors about outstanding judgments against her totaling \$25,000. Docket No. SD-06-0022.

Apr. 26, 2006. The Division initiated proceedings to revoke the license of **Steven B. Heinz**, of Orem, and to fine him for improper sales of mutual funds. The petition alleges Heinz improperly benefited himself by using a pattern of purchases that avoided breakpoints and caused the customer to pay higher fees. The customer, single and taking care of her son and mother, had limited investment experience. The petition also seeks \$50,000 in fines. Docket No. SD-06-0021.

May 3, 2006. An order to show cause was filed against **Video Projects, Inc., Dike E. Williams**, its president, and **Robert H. Caldwell** for taking \$550,000 in investments in Video Projects and for deceiving investors. Video Projects, of Sandy, claimed to be in the business of computer sales, service, and training. Investors were falsely told their investment was secured by \$7 million in real estate equity, and were not told that the company had cash flow problems or that Williams owed unpaid judgments. The money taken from investors was used to pay other investors and to pay Williams' personal expenses. Docket No. SD-06-0023. On June 7, Caldwell

consented to the entry of a cease and desist order and paid \$13,850 in restitution. Docket No. SD-06-0025.

May 4, 2006. **Golden Age Marketing and Management Associates Insurance Marketing**, of Highland, and its owner, **Lyle Brent Dahle** were named in an order to show cause. The order alleges that seniors attending seminars sponsored by Golden Age and taught by Dahle purchased unregistered securities in the form of promissory notes issued by Golden Age and stock options. Dahle did not disclose a prior criminal conviction for securities fraud. Docket No. SD-06-0026.

May 4, 2006. A petition was issued to suspend the license of **Marvin R. Smith**, of Sandy, for engaging in improper Internet advertising and providing misleading information. Smith advertised his services on the web without identifying his broker-dealer. The petition alleges that the web site misled customers about his compensation and violated his broker-dealer's compliance policies. Smith also is accused of engaging in outside business activities not disclosed to his broker-dealer or the state. SD-06-0028.

May 11, 2006. The Attorney General filed criminal charges alleging securities fraud by **Daniel D. Debenham**, of Sandy, for selling promissory notes that he claimed would be used to buy real estate. Debenham was the owner of The Millionaire Investors Group (TMIG). He took \$159,773 from three investors to purchase properties that supposedly would be remodeled and sold for a profit. The charges allege that Debenham falsely claimed that the money would be used for down payments on homes and that he had sufficient assets to protect the investments. Instead, the money was used for personal expenses and to make payments on other property he owned. Administrative proceedings brought by the Division against Debenham and TMIG in March 2006 are still pending.

May 12, 2006. **William E. Ferguson**, of Salt Lake was sentenced to up to 15 years in prison for his role in promoting fraudulent movie investments. He pleaded guilty in February to three counts of selling securities without being licensed. He had taken \$157,300 from eight investors in 2002 and 2003 to finance a teen comedy being filmed. He failed to tell investors that he had a prior criminal conviction for securities fraud.

May 17, 2006. **Douglas K. Nelson**, of Weber County consented to a cease and desist order and paid a \$5,000 fine. As a board member of Mainstreet International, he had offered stock in Mainstreet and another company, Technocash. He used high pressure tactics to pressure investors to act quickly. He admitted violating the law by selling securities that were not registered and failing to give adequate disclosure. This order replaces a February 2005 default. Docket No. SD-02-0099.

May 19, 2006. An order to show cause was issued against **Peak Funding, Inc.** and **Leland Wheeler**, both of New York, for taking money from a Utah investor in an advance-fee scheme. The investor paid \$14,781 in expectation of receiving a low-interest loan of \$300,000. Wheeler and Peak are accused of employing deceptive tactics and making false statements in soliciting the funds. Docket No. SD-06-0029.

June 12, 2006. Criminal charges were filed by the Utah Attorney General against **Scott L. Rhoads**, and his son, **Zachary L. Rhoads**, of Eden. The two were charged with securities fraud for taking more than \$800,000 from investors for a used car business. Investor notes were to be secured by vehicles on the sales lot, but instead the cars were pledged to another lender. A prior criminal conviction of Scott Rhoads was not disclosed to investors.

June 16, 2006. **William Ray Clemons**, of Salt Lake, consented to an order barring him from the securities industry and requiring

that he pay restitution of \$20,000. In the order, Clemons admitted taking monies for a mutual fund, then using the funds for personal expenses. Clemons currently is in jail, serving a sentence for credit card fraud. Criminal charges brought by the Attorney General for the mutual fund deception are still pending. Docket No. SD-05-0068.

June 20, 2006. **Zell Lou Mills**, of Salt Lake, consented to a cease and desist order for two different investment schemes. One was a European “prime bank” scheme in which investors were told they would double their money with no risk by funding transfers between European banks. The second was for investments that included stock in a Nevada company, commodity futures, and Euro-denominated CDs. Docket No. SD-06-0031. Mills also had pleaded guilty to three counts of securities fraud in December 2005 and was ordered to pay \$185,000 in restitution.

June 26, 2006. The Division issued an order to show cause in an investment scheme involving property at Thanksgiving Point in Utah County. **Royal American Real Estate Holdings, Theodore L. Hansen**, and **Charles W. Hanna** are accused of taking \$100,000 from an investor to purchase property, then using the funds to pay rent, salaries, and other personal expenses. The investor was not told that Hansen owed \$9.3 million in tax liens and \$3.5 million in civil judgments. Hanna also had outstanding tax liens. Docket No. SD-06-0035.

June 26, 2006. An order to show cause was issued against **Thomas Mitchell Johnson** of Los Angeles for an international investment scheme in which he sold an investor stock in a British company. Johnson called his company Zurich Capital Holdings, of Beverly Hills, California. Johnson promised that the investor would double his \$45,000 investment in four months, but failed to deliver any stock. In reality, Johnson had no authority to represent the company whose stock he was offering and he had no stock. Johnson never disclosed to the investor that

he had two prior convictions for grand theft, in 1986 and 1994. Docket No. SD-06-0032.

June 27, 2006. The Utah County Attorney filed three felony charges of theft and communications fraud against **Christopher Harris** of Orem. This case stems from an investigation conducted by the Division. Harris is accused of taking \$205,000 from an investor to start a company called Revolution Holdings, which was to provide debt elimination and other services. But, a week later, the company declared bankruptcy. Harris, a former stockbroker, convinced the investor to cash in an annuity and use the proceeds for the investment. He never disclosed his prior criminal charges, bankruptcy, liens imposed against him, or the repossession of the home he had promised as collateral.

June 28, 2006. **Jeffrey L. Mowen** was charged with two second-degree felonies for securities fraud and theft by the Utah Attorney General. Mowen took \$200,000 from a couple involved in the same multilevel marketing scheme as Mowen, promising to reap great profits as an “international banker” in the foreign currency markets. Mowen claimed he had made his first million by age 19 and that a best-selling real estate investment book was based on his business methods. The charges claim that Mowen used the investor’s money to pay personal expenses including repaying \$100,000 to an earlier investor, paying credit card bills, withdrawing cash, spending \$12,000 on food and entertainment, and travel and home expenses. The victims were found using affinity fraud: both the Mowens and the victims were distributors in the same multilevel marketing program.

June 29, 2006. The Division of Securities filed an order to show cause against **Jeffrey L. Mowen** and his wife, **Elizabeth Ward Mowen**, for the same conduct as outlined in the criminal case described above. The administrative case seeks entry of a cease and desist order and imposition of \$275,000 in fines. Docket No’s. SD-06-0037, 0038.